

FILED

Attachment A

DEC 06 2022

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		Northern District of West Virginia	
Name (under which you were convicted): IAN ANDRE CARR		Criminal Case No.: 3:20-CR-43-1	
Place of Confinement: FCI SCHUYLKILL		BOP Prisoner No.: 02254-087	
3:22cv207 Klee/Trumble/Sims			

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: U.S. DISTRICT COURT NORTHERN DISTRICT OF WEST VIRGINIA
- (b) Criminal case number (if you know): 3:20-CR-43-1
2. (a) Date of the judgment of conviction (if you know): MARCH 07, 2022
- (b) Date of sentencing: MARCH 07, 2022
3. Length of sentence: 151 MONTHS
4. Nature of crime (all counts): §21 U.S.C. 841

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5. (a) What was your plea? (Check one)

Not guilty ☐ Guilty ☒ Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count of the indictment, and a not guilty plea to another count of the indictment, what did you plead guilty to and what did you plead not guilty to? _____

6. If you went to trial, what kind of trial did you have? (Check one)

Jury ☐ Judge only ☐ N/A

7. Did you testify at a pretrial hearing, trial, or post-trial hearing?

Yes ☐ No ☐ N/A

8. Did you appeal from the judgment of conviction? Yes ☐ No ☒

9. If you did appeal, answer the following:

(a) Name of court: _____ N/A

(b) Appeal case number (if you know): _____ N/A

(c) Result: _____ N/A

(d) Date of result (if you know): _____ N/A

(e) Grounds raised: _____ N/A

(f) Did you file a petition for certiorari in the United States Supreme Court?

☐ Yes ☒ No

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If yes, answer the following:

(1) Case number (if you know): N/A

(2) Result: N/A

(3) Date of result (if you know): N/A

(4) Grounds raised: N/A

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court? ☐ Yes ☒ No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: N/A

(2) Case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? ☐ Yes ☐ No N/A

(7) Result: N/A

(8) Date of result (if you know): N/A

- (b) If you filed a second motion, petition, or application, give the same information:

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(1) Name of court: N/A

(2) Case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your petition, application, or motions? ☐ Yes ☐ No N/A

(7) Result: N/A

(8) Date of result (if you know): N/A

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First Petition: Yes ☐ No ☐ N/A

(2) Second petition: Yes ☐ No ☐ N/A

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: N/A

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach no more than 5 typed or 10 neatly printed additional pages total for all grounds if you have more than four grounds. State the facts supporting each ground.

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GROUND ONE:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): INEFFECTIVE ASSISTANCE OF COUNSEL BEFORE, AFTER
AND DURING THE PLEA PROCESS AND NEGOTIATIONS

SEE ATTCHED MEMORANDA OF LAW

(b)

Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: _____
PER COUNSELS EXPLANATION OF WAIVER

(c) Post Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application after conviction other than direct appeal?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:
N/A

Case number (if you know): N/A

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Date of the Court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition or application?

☐ Yes ☒ No

(4) Did you appeal from the denial of your motion, petition, or application?

☐ Yes ☐ No N/A

(5) If your answer to Questions (c)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☒ No

(6) What was the result? N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: DID NOT FILE NOTICE OF APPEAL

GROUND TWO:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): COUNSEL FAILED TO CONSULT ABOUT THE ADVANTAGES AND DISADVANTAGES OF FILING A NOTICE OF APPEAL

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(b) **Direct Appeal of Ground Two:**

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(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: _____

NO APPEAL SOUGHT

(c) **Post Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application after conviction other than direct appeal?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____ N/A

Name and location of the court where the motion or petition was filed:

_____ N/A

Case number (if you know): _____ N/A

Date of the Court's decision: _____ N/A

Result (attach a copy of the court's opinion or order, if available): _____

_____ N/A

(3) Did you receive a hearing on your motion, petition or application?

☐ Yes ☐ No N/A

(4) Did you appeal from the denial of your motion, petition, or application?

☐ Yes ☐ No N/A

(5) If your answer to Questions (c)(4) is "Yes," did you raise this issue in the

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(1) Did you raise this issue in any post-conviction motion, petition, or application after conviction other than direct appeal?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Case number (if you know): N/A

Date of the Court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition or application?

☐ Yes ☒ No

(4) Did you appeal from the denial of your motion, petition, or application?

☐ Yes ☒ No

(5) If your answer to Questions (c)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No N/A

(6) What was the result?

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A

GROUND FOUR:

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(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): COUNSEL FAILED TO INVESTIGATE OR REMAIN ABREAST AS
TO THE LAWS INVOLVED IN RELATION TO CARR'S PRIORS

SEE ATTACHED MEMORANDA OF LAW

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: _____

N/A

(c) Post Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application after conviction other than direct appeal?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Case number (if you know): N/A

Date of the Court's decision: N/A

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Result (attach a copy of the court's opinion or order, if available): _____

_____ N/A _____

(3) Did you receive a hearing on your motion, petition or application?

☐ Yes ☐ No N/A

(4) Did you appeal from the denial of your motion, petition, or application?

☐ Yes ☐ No N/A

(5) If your answer to Questions (c)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No N/A

(6) What was the result? _____

_____ N/A _____

If your answer to Question (c)(4) is "Yes," state:

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____ N/A _____

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: _____ THE GROUNDS PRESENTED HEREIN ARE BEFORE THE HABEAS COURT FOR THE FIRST TIME _____

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒

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If "Yes," state the name and location of the court, the case number, the type of proceeding, and the issues raised. N/A

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: N/A

(b) At arraignment and plea: PLEA NEGOTIATION MARK SUTTON
125 E. KING ST. MARTINSBURG W.V. 25401

(c) At trial: N/A

(d) At sentencing: ATTORNEY MARK SUTTON

(e) On appeal: N/A

(f) In any proceeding after conviction other than direct appeal: N/A

(g) On appeal from any ruling against you in any post-conviction proceeding after conviction other than direct appeal: N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

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- (a) If so, give name and location of court that imposed the other sentence you will serve in the future: N/A
- (b) Give the date the other sentence was imposed: N/A
- (c) Give the length of the other sentence: N/A
- (d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future?
- Yes ☐ No ☒

18. **TIMELINESS OF MOTION:** If your judgment of conviction became final more than one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.¹

Therefore, you ask that the Court grant the following relief:

REMOVE THE CAREER OFFENDER ENHANCEMENT AND RESENTENCE OR...

¹ The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255 paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of -

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court, if applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

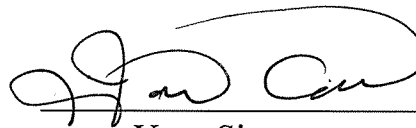
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and any other relief to which you may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on Dec. 1 (month, day, year).

Executed (signed) on Dec. 1, 2022 (date).

A handwritten signature in black ink, appearing to read "J. M. Can", is written over a horizontal line.

Your Signature

If the person signing is not you, state the relationship to you and explain why you are not signing this petition.